701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2696
Telephone 202-508-5615
Fax 202-508-5673

www.eei.org

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EDISON ELECTRIC INSTITUTE

EDWARD H. COMER
Vice President & General Counsel

November 5, 2007

Kevin M. Kolevar
Assistant Secretary, Electricity Delivery and Energy Reliability
Office of Electricity Delivery and Energy Reliability, OE-20
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

By hand delivery

Attn: Dockets No. 2007-OE-01 and 2007-OE-02

Re: EEI Request for Rehearing and Clarification of DOE Order Designating Mid-Atlantic and Southwest Area National Corridors

Dear Assistant Secretary Kolevar:

The Edison Electric Institute ("EEI") is filing this Request for Rehearing and Clarification ("Request") in response to the U.S. Department of Energy's ("DOE's") recent Order designating a Mid-Atlantic Area National Interest Electric Transmission Corridor ("Mid-Atlantic Area National Corridor") in Docket No. 2007-OE-01 and a Southwest Area National Interest Electric Transmission Corridor ("Southwest Area National Corridor") in Docket No. 2007-OE-02. DOE published the Order at 72 Fed. Reg. 56992 on October 5, 2007 ("Order") and specified that requests for rehearing must be received by 5 p.m. Eastern time on November 5, 2007. Please include this Request in both of the aforementioned Dockets No. 2007-OE-01 and 2007-OE-02.

EEI Has a Direct Interest in Ensuring a Sufficient and Robust Transmission Grid

EEI is the association of U.S. shareholder-owned electric companies, international affiliates, and industry associates worldwide. Our U.S. members serve 92 percent of all customers served by the shareholder-owned segment of the industry. They generate almost 60 percent of all electricity generated by electric companies in the country, and serve 67 percent of all ultimate customers in the nation. Furthermore, they own the vast majority of the nation's transmission and distribution facilities, using those facilities to ensure that electricity can be delivered to customers, who are necessarily located some distance from generation facilities, and in some cases (including when renewable generation is involved) may be an extended distance from the facilities.

In providing electricity to communities, businesses, and residents throughout the country, EEI members depend on an integrated network of electricity generation, transmission, distribution, and related facilities. Such facilities are vital components of our nation's electricity grid, which must be operated to meet electricity demand in real time and must be kept in careful balance to avoid reliability problems and to enable efficient operation of the grid.

In particular, utilities need a sufficient network of transmission facilities to ensure that electricity generated or purchased at wholesale can be delivered reliably and economically to customers who need it. Without a sufficient transmission network, congestion can hamper day-to-day delivery of electricity, especially during periods of peak demand when prices are highest, and in worst cases transmission constraints can threaten reliability of electric service. Further, as demand for electric service grows, in

particular from renewable fuels, additional transmission is needed to move electricity from generation to load and to relieve congestion on the grid. Therefore, it is essential that EEI members and other electricity providers be able to site, maintain, and operate transmission facilities necessary to ensure grid reliability, to provide access to renewable and other domestic fuel sources, and to achieve an economical supply of electricity.

However, siting and maintaining transmission facilities is a daunting task. Though customers and their communities depend on such facilities to obtain the electricity they use every day, individuals in areas where new transmission facilities are needed often are concerned about visual and other impacts of the facilities and resist adding new facilities and maintaining facilities properly. Also, transmission facilities typically must be approved by a state agency with siting approval in each of the states where they are located, and states may not always agree on the need for particular facilities or the locations of the facilities, especially if the facilities are intended in whole or in part to ensure regional reliability rather than solely to provide direct service from generation to load centers within a single state. Furthermore, if federal lands are involved or federal environmental statutes are triggered, utilities may need to obtain federal agency authorizations at least for portions of transmission facilities – this is an issue of particular importance in the Western U.S. where large areas of land are federally owned. All of this tends to make the siting process quite difficult, complex, and time consuming.

At the same time, demand for electricity continues to grow throughout the U.S., in part because of population growth, and in part because electricity has proven to be such a valuable form of energy for an increasing variety of uses, including heating, cooling,

lighting, refrigeration, cooking, traffic control, water delivery, medical technology, and computers. The ongoing increase in demand for electricity requires continued attention to the need for new generation and transmission facilities and adequate maintenance of those facilities. Moreover, under federal and state law, the generation and sale of electricity are increasingly undertaken in open and competitive marketplaces, and utilities are required to rely on an increasingly diverse and often distant-from-load array of generation (including generation based on renewable energy sources) to supply electricity to customers. As a result, the nation's transmission grid is expected to handle a larger volume of traffic, often covering greater distances, than it has in the past.

Because of these increasing demands and the difficulty in siting and maintaining transmission facilities, our nation's transmission grid and electricity system have become quite heavily loaded in recent years. According to the North American Electric Reliability Corporation ("NERC"), large areas of the United States are currently operating with thin generation and transmission capacity margins. NERC's recent *2007 Long-Term Reliability Assessment*, at page 10, says that "projected increases in peak demands continue to exceed projected committed resources beyond the first few years of the ten-year planning horizon," and "[a]reas of most concern include [the Western Electricity Coordinating Council]-Canada, California, Rocky Mountain States, New England, Texas, Southwest and the Midwest."

Congress has recognized and responded to such concerns and the need for new transmission facilities by enacting a number of important provisions of the Energy Policy Act of 2005 ("EPAct 2005"). Title XII of the Act contains four subtitles directly seeking

to improve and modernize transmission facilities and assure reliability. Subtitle A, Reliability Standards, establishes a new mandatory system for assuring reliable operation of the transmission grid. Subtitle B, Transmission Infrastructure Modernization, not only adds the DOE congestion and designation authority of new Federal Power Act ("FPA") section 216, but also grants the Federal Energy Regulatory Commission ("FERC") backstop siting authority in corridors designated by DOE, grants DOE additional authority to coordinate the approval of transmission facilities by federal agencies, and authorizes federal Power Marketing Agencies to use private funds under certain circumstances to construct needed transmission facilities. Subtitle C, Transmission Operation Improvement, and Subtitle D, Transmission Rate Reform, adopt other statutory changes to facilitate fair open access to transmission facilities and to assure that transmission owners are properly financially incented to construct needed transmission facilities. Taken together, these provisions demonstrate a concerted Congressional intent to facilitate the efficient and reliable operation and expansion of the nation's transmission infrastructure.

As DOE has recognized in its Order, in FPA section 216, Congress has directed DOE to study congestion and constraints on the nation's transmission system, and Congress has given DOE authority to designate areas of the system that raise sufficient concerns to be identified as National Interest Electric Transmission Corridors. The clear purpose of such designations is to provide an alternative federal forum if states cannot or do not act in a timely way to address significant transmission congestion and constraints.

In such circumstances, FERC may step in to address these issues if and when presented with specific transmission proposals.

EEI Strongly Supports DOE's Congestion Study and Designation Order

EEI applauds DOE for the careful job that DOE has done in preparing its first congestion study and undertaking its first National Corridor designations under EPAct 2005. DOE issued its first "National Electric Transmission Congestion Study" under FPA section 216 in August 2006, identifying a number of transmission congestion and constraint areas of concern in the Eastern and Western U.S., including two critical congestion areas underlying the Mid-Atlantic and Southwest Area National Corridors. DOE based its findings in the Congestion Study on careful review of a variety of indicia of congestion and constraints, after substantial consultation with and input by affected states, electricity reliability organizations, regional transmission operators, electric utilities, and the public.

In turn, based on its findings in the Congestion Study, DOE subsequently proposed to designate the Mid-Atlantic and Southwest Area National Corridors that are the focus of its current Order, in a *Federal Register* notice published on May 7, 2007. Again, DOE developed and refined the two National Corridors now identified in the October 5, 2007 Order in careful consultation with affected states, reliability organizations, regional transmission operators, utilities, and the public. This consultation included a series of regional public meetings and a 60-day opportunity for written comments in response to the proposed designations. Furthermore, as DOE's October 5

Order demonstrates, DOE has carefully considered the input it received from all parties and reached reasoned decisions in response.

EEI strongly supports the overall designation Order and the conclusions DOE reaches in the Order. In particular, for example, we support:

- DOE's use of a variety of indicia to ascertain where in the U.S. transmission congestion and constraints are leading to reliability and customer concerns sufficient to warrant national corridor designation consistent with the provisions of FPA section 216;
- DOE's conscious choice not to determine the precise causes or potential solutions to those problems, or the benefits and costs of such solutions – DOE properly has noted that these are matters for states, reliability organizations, regional transmission operators, and utilities to resolve, and only if they do not do so will FERC get involved under these statutory provisions;
- DOE's designation of relatively broad and inclusive geographic areas, which will permit states, utilities, and other interested parties to address transmission congestion and constraints using a wide array of transmission options as well as generation, demand reduction, and other solutions;
- DOE's use of the source-and-sink approach in identifying the corridor boundaries, looking for nearest available excess generating capacity and undeveloped renewable resources to meet demand in key load centers within each corridor;
- DOE's use of counties as a reasonable means of identifying the boundaries of the corridors with some clarity while preserving flexibility in choice of solutions;

- DOE's determination that the corridor designations do not require detailed review under the National Environmental Policy Act ("NEPA") or other similar federal statutes – The designations are limited to identification of congestion and constraint problems. They do not focus on or pre-judge what solutions will best address the transmission congestion and constraints, and they do not authorize or approve construction of any facilities. Instead, as DOE has recognized, the designations provide a new procedural option at FERC, which will conduct appropriate NEPA analyses if and when specific proposals are brought to FERC. Thus, detailed review by DOE at the corridor designation stage under NEPA and other such federal statutes would be speculative and unproductive. States, and FERC if involved, will undertake such reviews as warranted in the context of developing and reviewing specific transmission and other solutions;
- DOE's distinction between the National Corridors at issue under FPA section 216(a) and the very different right-of-way corridors across federal lands at issue under EPAct 2005 section 368;
- DOE's determination that it has provided ample opportunity for public input throughout both the Congestion Study and National Corridor Designation processes; and
- DOE's substantial effort to address the numerous comments it received on the Congestion Study and proposed National Corridor Designations, fully acknowledging the concerns raised, but responding politely and appropriately to put the concerns in proper context, as just described.

In time, DOE says that it plans to consider designating additional National Corridors based on congestion and constraint areas of concern identified in its August 2006 Congestion Study and comments DOE has received on the study and the May 7, 2007 notice proposing the Mid-Atlantic and Southwest Area National Corridors. See the current designation Order, at 72 Fed. Reg. 56997, first column. We encourage DOE to proceed with that further analysis reasonably soon, to ensure that other geographic areas that warrant designation are identified and the underlying congestion and constraints are addressed in a timely way.

Statement of Issues

EEI is submitting this Request for Rehearing and Clarification to encourage DOE to provide four sets of changes and clarifications to its October 5, 2007 designation Order that would help to avoid uncertainty and would strengthen the Order:

1. Corridor Boundaries – DOE has drawn its corridor boundaries using the source-and-sink and county-based approaches described briefly above, and DOE reserves the right to modify the scope of the designations following notice and comment. EEI encourages DOE to clarify that in designating corridors, it will include additional geographic areas identified by utilities as necessary to ensure that a full array of potential solutions can be considered. Also, we encourage DOE to specify that it will not reduce the scope of a designation if, based on comments received, the change would hamper consideration of a solution.
2. NEPA and the Ground-Breaking Argument – DOE received comments that it must do a full NEPA analysis before designating corridors because, for among

other reasons, after designation DOE loses control over resulting ground-breaking activities. In response, DOE has said that it reserves the right to modify designations at any time. Instead, EEI encourages DOE to note that its designations do not authorize any ground-breaking activities, and DOE will not be involved in authorizing such activities at a later stage, so DOE's designation simply does not involve "ground-breaking activities" now or in the future that could form a potential basis for NEPA analysis

3. Takings Argument – DOE has responded to concerns that FPA section 216 authorizes takings without just compensation by saying that section 216 provides for just compensation "in the event that a FERC permit holder were to exercise the right of eminent domain." EEI encourages DOE also to note that corridor designations themselves do not involve any land use determinations or approvals, so the designations do not in fact present land value, compensation, or takings issues.
4. Duration of Designations – DOE has designated the two new corridors for 12 years, subject to its authority to rescind, renew, or extend the duration following notice and comment, and DOE notes that it will not allow the designations to terminate while a permit application is pending at FERC or FERC-approved facilities are under construction. EEI encourages DOE not to rescind designations if, based on comments, any applicants are already engaged in state or FERC proceedings, including at the pre-filing, post-filing, or appeal stage as to facilities meant to address congestion in the corridor. We also encourage DOE to issue a

notice before the 12-year sunset occurs, and again if comments received in response indicate that facilities are in process, not to allow the sunset to occur.

Issue 1 – Corridor Boundaries Should Enable Examination of a Full Array of Solutions and Should Not Be Reduced if That Would Hamper Consideration of a Solution

DOE has drawn its corridor boundaries using the source-and-sink and county-based approaches described briefly above. See e.g. Order at 72 Fed. Reg. 57005-8 (Mid-Atlantic Area) and 57016-18 (Southwest Area). As we already have noted, we believe that DOE has taken a reasonable approach to interpreting the meaning of "national corridor" and how best to set the geographic boundaries of the corridors, and we fully support those approaches.

At the same time, DOE notes that numerous commenters requested that additional counties be added to (or removed from) the Mid-Atlantic Area National Corridor. But instead, DOE says that it has stopped with the counties identified through its source-and-sink analysis, without "further adjustment." See Order at 72 Fed. Reg. 57008. EEI encourages DOE to clarify that in designating corridors, DOE will consider requests to add counties if made by utilities and other knowledgeable sources within the electricity industry, as necessary to ensure that a full array of potential solutions can be considered within each corridor. While DOE's analysis is likely to lead to relatively complete designations, DOE may miss one or more areas that should be included within the corridor boundaries.

In addition, in the ordering paragraphs of section V of its Order, DOE has reserved the right to modify the scope of the designations, following notice and an

opportunity for comment. Order at 72 Fed. Reg. 57025-6. If DOE should propose to narrow the scope of a corridor it has designated, and should receive comments noting the proposed changes would hamper consideration of one or more potential solutions to congestion and constraints in the corridor – including solutions that may already be under review as discussed in Issue 4 below – DOE should not make the changes without retaining sufficient scope to enable those solutions to be considered.

Issue 2 – DOE Designations Do Not Authorize Ground Breaking, So the Ground-Breaking Argument Simply Is Not a Basis for NEPA Evaluation

In the NEPA discussion in section IV.D of the Order, DOE notes some "[c]ommenters asserted that an agency cannot delay NEPA review unless the agency reserves the ability to prevent surface disturbing activities at a later stage." DOE's response is that "[a]s provided in the Ordering Paragraphs in Section V below, the Department is explicitly reserving the right to rescind, renew or extend the designations or modify the scope of the designations, should circumstances so require." But this response does not appear to address fully the issue presented. Order at 72 Fed. Reg. 57022.

Instead, EEI encourages DOE to note that its National Corridor designations do not authorize any ground-breaking activities or indeed any activities at all other than a potential right to file for approval of a transmission facility at FERC if certain circumstances are satisfied. Moreover, if any ground-breaking activities ultimately are involved in responding to congestion and constraints warranting designation, those activities will be approved by other state and federal agencies, not DOE, and those other

agencies will evaluate the environmental effects of those activities as part of the process of approving them. Therefore, "ground-breaking activities" are simply not a factor calling for NEPA analysis by DOE in the designation context.

Issue 3 – Designations Do Not Present Takings Issues

In the opening section of its Order, DOE discusses various comments it has received that appear to challenge the overall validity of FPA section 216 and the statutory framework that Congress has created. One such set of comments apparently challenged the eminent domain and federal siting authority of section 216 as violating the Fifth Amendment to the U.S. Constitution. In response, DOE says that it "has no basis to conclude that the provision is unconstitutional. The Fifth Amendment … bars the taking of private property without just compensation, but … FPA section 216(f)(2) explicitly provides for just compensation in the event that a FERC permit holder were to exercise the right of eminent domain." Order at 72 Fed. Reg. 56997.

EEI agrees with DOE's analysis of this and the other comments challenging section 216 and the framework Congress has established. In addition, we encourage DOE to note that corridor designations themselves do not involve any land use determinations or approvals, much less the approval of any particular projects or uses of particular land, so the designations do not in fact present land value, compensation, or takings issues. The comments are simply misdirected in the context of this Order.

Issue 4 – Designations Should Remain in Place as Long as Potential Solutions are Under Review

In its Order, DOE has designated the two new national corridors for 12 years, with the proviso that the designations will not terminate if there is a pending application at FERC or if FERC has granted a permit pending construction. DOE observes that section 216(a) itself does not set a time limit on the designations, and that even without an expiration date, FERC can permit transmission facilities within the corridors only so long as congestion or constraints persist. But in the face of state concerns about open-ended designations, and comments calling for durations as short as 3 years to coincide with the congestion study cycle, DOE has opted to put the conditional time limit on the designations. In addition, DOE has reserved the right to rescind, renew, or extend the designations, following notice and an opportunity for comment. See Order at 72 Fed. Reg. 57014 (Mid-Atlantic Area) and 57021 (Southwest Area).

EEI understands the balancing act in which DOE is engaging, and we certainly support a 12-year duration rather than a shorter one. We also fully support the conditions DOE has added to protect applications that are in process and projects that have been approved by FERC. The planning and installation of electricity facilities often takes longer than 3 years, and most utilities, regional transmission operators, and NERC examine anticipated needs in the electricity system on a 10-year or longer cycle. Utilities and others involved in the planning and installation of such facilities need the 12-year horizon DOE is providing.

At the same time, we encourage DOE not to rescind a designation if, after issuing notice of intent to rescind, DOE receives comments indicating that an applicant is already

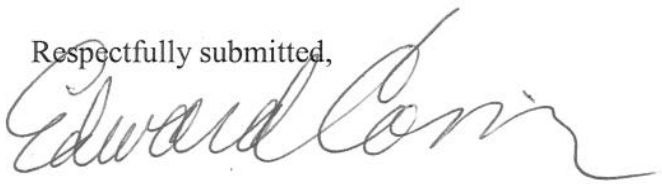
engaged in state or FERC proceedings as to a facility meant to address congestion in the corridor. Similarly, we encourage DOE to issue a notice before the corridors expire at the end of their 12-year terms, again so applicants already engaged in state or FERC proceedings can bring this to DOE's attention. If an applicant is involved in the pre-filing, post-filing, or appeal stage before one or more states or FERC within a designated corridor, the applicant already will have invested significant resources in the application process. Furthermore, as DOE has recognized, if the applicant goes to FERC for approval of a transmission facility, the applicant will need to demonstrate that the facility will significantly reduce congestion under FPA section 216(b)(4) and meet other requirements set out in section 216(b)(1-6). Therefore, DOE should not rescind a designation or allow it to terminate while such proceedings are underway.

Conclusion and Contact Information

EEI strongly supports DOE's designation Order and the reasonable positions and sound reasoning that DOE has provided throughout the Order. We are filing this Request for Rehearing and Clarification simply to address four relatively minor areas where the Order contains some ambiguity and where DOE clarifications would help to strengthen the Order.

If DOE has any questions about this Request, please contact me or Henri Bartholomot at 202/ 508-5622. Thank you.

Respectfully submitted,



Edward H. Comer